

# Holland & Knight

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March 25, 2015

## **BY ECF FILING**

Hon. P. Kevin Castel  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: Commodities & Minerals Enterprise Ltd. v. Gretchen Shipping Inc. et al.  
Dkt. # 13-cv-6548 (PKC)(GWG)  
Our File: 136961.00001

Honorable Sir:

We are counsel for Plaintiff Commodities & Minerals Enterprise Ltd. ("CME") in the above referenced proceeding. We write on behalf of all parties with respect to the conference before Your Honor on February 20, 2015, to report that the parties have reached an agreement to mediate their disputes (i.e., the merits of all claims by and among the parties that form the subject matter of this action, as well as the underlying dispute, including any current and future arbitration), and to seek Your Honor's endorsement on a revised proposed pre-trial and trial schedule based on the agreement to mediate.

As Your Honor may recall, the parties proposed the following pre-trial schedule at the conference before Your Honor on February 20:

March 20 -- Parties agree on joint statement of facts

March 24 -- CME's direct exam witness statements served

April 7 -- Vazquez Defendants' direct exam and rebuttal witness statements served

April 17 -- CME's rebuttal witness statements served

May 8 -- file joint pre-trial order and witness statements

May 15 -- pre-trial briefs filed

June 15 -- trial commences

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At the February 20 conference, Your Honor made the point of the high cost of these proceedings (not to mention the follow-up arbitration), which point the parties have taken to heart. After that conference, discussions commenced about seeking to mediate the parties' claims. As a mediation agreement required the coordinating of the schedules of at least three attorneys and four principals (not to mention insurers), as well as the agreement on a mediator and the scheduling of such a mediator at a time when all concerned were available, it has taken some time to reach a definitive agreement. Furthermore, we did not want to write to Your Honor to report anything until the mediation agreement was confirmed and the mediator scheduled.

We are now pleased to report that the parties have engaged the services of the Honorable Frederic M. Smalkin, retired U.S. District Judge and former Chief Judge of the U.S. District Court for the District of Maryland, now serving with JAMS as a mediator. Judge Smalkin will be presiding over the mediation in New York on April 15/16.

In order to induce the parties to settle, all parties agree that avoiding the pre-trial costs imposed by the current pre-trial schedule would be preferable. The parties have put together a proposed joint statement of facts and will submit that to Judge Smalkin as part of the mediation. The parties likewise expect to submit a pre-mediation brief to Judge Smalkin. If the costs of preparing witness statements and the pre-trial order could be avoided before the mediation, however, such costs can be factored as savings resulting from settlement. Accordingly, the parties respectfully request Your Honor to endorse the following revised pre-trial schedule:

Before April 15 -- Parties complete/submit joint statement of facts to mediator as well as pre-mediation brief as may be required by mediator

May 15 -- CME's direct exam witness statements served

May 29 -- Vazquez Defendants' direct exam and rebuttal witness statements served

June 12 -- CME's rebuttal witness statements served

June 19 -- file joint pre-trial order and witness statements

July 2 -- pre-trial briefs filed

Week of July 20 onwards -- trial date (3 days expected) as per Court's schedule

For Your Honor's guidance, counsel have the following conflict-free windows of three or more days in the two month period post July 20:

July 20-24

July 27-31

September 9-11

September 14-18

September 21-25

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We thank Your Honor for his attention to this request, and we look forward to receiving Your Honor's decision. In the event that Your Honor decides to endorse the parties' request, we have provided a "So Ordered" line below.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Michael J. Frevola

Michael J. Frevola

MJF:pb

cc: All Counsel of Record

**SO ORDERED:**

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U.S.D.J.

Date

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